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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x

4 TRACY CATAPANO-FOX,

5 Plaintiff,

6 v. 14 Civ. 8036 (KPF)

7 THE CITY OF NEW YORK, et al.,
8 Defendants.

Telephone Conference

9 New York, N.Y.
10 July 1, 2015
11 12:00 p.m.

12 Before:

13 HON. KATHERINE POLK FAILLA

14 District Judge

15 APPEARANCES

16 WIGDOR LLP
17 Attorneys for Plaintiff
18 BY: MICHAEL J. WILLEMIN

19 ZACHARY W. CARTER
20 Corporation Counsel for the City of New York
21 Attorney for Defendants

22 DONNA A. CANFIELD
23 Assistant Corporation Counsel

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1 (In chambers)

2 (Case called)

3 MR. WILLEMIN: This is Michael Willemin of Wigdor LLP
4 for plaintiff Tracy Catapano-Fox.5 MS. CANFIELD: Donna Canfield for the New York City
6 Law Department, for all defendants.7 THE COURT: Good afternoon to both of you. This is
8 Judge Failla. I have a court reporter taking down these
9 proceedings and I will ask you to get a transcript at some
10 point after this conversation ends.11 We're here today because of a series of letters that I
12 have received. And the ones that I have, I have a letter from
13 the Wigdor Firm that is dated June 17. Then I have a response
14 of June 23 from Ms. Canfield. And there are some exhibits to
15 the Wigdor letter that I have looked at as well.16 Let me just begin with an overview. I'm sad but not
17 surprised to see that we have a discovery dispute here. I
18 actually did think that the amount of time that I specified in
19 my opinion was enough to get things done. So it's
20 disappointing on some level to realize that it hasn't been
21 done.22 Lest I be accused of unnecessarily criticizing people
23 are piling on, I just want to raise two issues.24 Mr. Willemin, I do understand -- and I appreciate that
25 you want to get to me in a very timely fashion -- any disputes

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1 that you see or think are about to happen in this case. But I
2 do think, sir, that upon learning that defense counsel was
3 going to be out of the office for two days you probably could
4 have extended her the courtesy of waiting those two days and
5 letting this response come in on the 22nd or 23rd. I don't
6 think that would have been fatal. And you could have told me
7 that you were extending a courtesy.

8 The bigger issue I have, candidly, is with
9 Ms. Canfield.

10 Ms. Canfield, I'm telling myself that you're not doing
11 this deliberately. But I do feel that the tenor of your letter
12 is an effort to try and force me into an extension that I don't
13 want to give. And so I can only just describe it in that way.
14 I have no idea what other cases you have and what other work
15 that you've been doing. But I have to tell you that there are
16 several points in your letter of the 23rd that -- and obviously
17 the last part of it where I just feel that you're trying to
18 force me into something that I don't want to do. And I just
19 want to communicate to you for future letters and for future
20 conduct in this case and for future cases that you may have
21 before me I bristle at the notion of people just willfully or
22 even recklessly refusing to abide by my discovery deadlines. I
23 actually try and put some thought into them. So it is
24 frustrating when the parties are not complying with it.

25 So I'm just asking the parties to keep both of these

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1 thoughts in mind. I don't actually need a response from either
2 of you as to either of those points.

3 Let me begin then with the things -- the non-overview
4 items on my list. Let me begin with the privilege log.

5 Mr. Willemin, I understand from Ms. Canfield that
6 she's leaving open the possibility that one day she may need a
7 privilege log but as of this moment she does not. I
8 understood, sir, that you're doing the same thing. So is there
9 an issue with respect to the privilege log?

10 MR. WILLEMIN: Only that in the letter there were --
11 even in the letter that Ms. Canfield submitted to the Court
12 there are numerous privilege objections that have been renewed.

13 If there is no privilege documents being withheld,
14 then that's fine. That's done. We don't need to deal with it.

15 I inquired, and that's the answer, then we don't need
16 to deal with it. But I'm just suspecting that there may be
17 because there continues to be a renewal of privilege
18 objections. That was my only concern.

19 THE COURT: Sure. I understood, Mr. Willemin, that
20 those objections were more on the order, if you'll excuse the
21 term, boilerplate.

22 But Ms. Canfield are there in fact any documents being
23 withheld on the grounds of privilege?

24 MS. CANFIELD: At the time of the letter, no, there
25 was not. But subsequent to the submission of the letter I

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1 notified Mr. Willemin, I believe yesterday, that -- an e-mail
2 we are going to deem privileged. And in my ESI review I do see
3 documents that we are potentially withholding on privilege
4 grounds.

5 The documents I do have now, for production, or I have
6 Bates stamped, I can produce the privilege log for that one
7 document. Or I can wait and produce the privilege log once the
8 entirety -- of the entire production. Either way I have no
9 problem producing privilege logs for documents we are deeming
10 privileged.

11 THE COURT: Mr. Willemin, I have no preference either.
12 You can express yours.

13 MR. WILLEMIN: I guess my preference would be to get
14 them as they come along on the privilege log only because, God
15 forbid, there are issues that need to be addressed in terms of
16 the assertion of privilege, I'd rather have that be able to be
17 addressed sooner rather than later, but I'm not going to
18 zealously advocate for that position. That's my preference.

19 MS. CANFIELD: That's fine.

20 THE COURT: You're not going to the mat on it. I
21 understand.

22 Can we then switch please to interrogatories.

23 Mr. Willemin, I understand your complaint to be that
24 there has only been a response to 2 of the 21.

25 Is that correct, sir?

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1 MR. WILLEMIN: Yes. That's correct.

2 THE COURT: And Ms. Canfield, do I understand your
3 response to be that you find that some of these interrogatories
4 are either inappropriate under the local rules or drafted in
5 such an imprecise manner that you're not actually sure what
6 he's seeking?

7 MS. CANFIELD: Yes. Let me just speak to that point.

8 I thought long and hard on how I would respond to
9 these interrogatories. And oftentimes I do construe the
10 requests to what I believe the request is. But I just --
11 rather than doing that, I objected. And the primary reason is
12 because I didn't want to guess what exactly plaintiff was
13 looking for. Secondly, I did not want to put the witness who
14 would be verifying interrogatories in a position of possible
15 impeachment.

16 So, I'm happy to answer the interrogatories. I would
17 just like some clarity. If they could be specific in some of
18 the -- any and all city employees, that's pretty broad. If it
19 could be narrow to any and all board members or executive
20 staff, if it could be limited in a way that I feel comfortable
21 and my witness feels comfortable verifying them. I'm happy to
22 respond to those.

23 I was not being cute. I spent a lot of time thinking
24 about it. I consulted with my colleagues here and that's
25 ultimately what I decided to do.

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1 THE COURT: Let me understand, please, the scope of
2 individuals for whom you feel comfortable responding on their
3 behalf.

4 Clearly it would include the CCRB, the board members
5 themselves.

6 Do you consider the executive folks to be something
7 other than that? Or do you consider that to be a subset of the
8 CCRB?

9 MS. CANFIELD: Subset would be the deputy executive
10 director. There are several -- one's in charge of
11 investigations. One's in charge of prosecutions. One's in
12 charge of operations. That's what I'm speaking of when I refer
13 to executive staff.

14 THE COURT: Would you be able to make the
15 representation with respect to any member of -- anyone employed
16 at or a member of the CCRB? Basically handling the admin
17 people as well as the board members?

18 MS. CANFIELD: Not the entire staff of the CCRB. I
19 would not feel comfortable soliciting responses to
20 interrogatories, who knew and who did not know.

21 Some of the information has been in the newspaper. So
22 conceivably everyone in the city has potential to know some
23 information about the litigation.

24 As I said, there's some way that some of the responses
25 can be narrowed I'm happy to respond to them -- I'm sorry, the

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1 interrogatories can be narrowed.

2 THE COURT: Mr. Willemin, let me talk to you about
3 that, sir.

4 I found it a little bit all-encompassing when you said
5 "all city employees or agents." I think that's a very
6 broadbrush with which to paint the potential folks who may
7 know. And while I suppose there is a -- there are people
8 within the city who might know these things and for whom this
9 is relevant to your case, I'm not sure that every single person
10 involved in any capacity with city government needs to be
11 questioned about this.

12 So, is there a way in which you can limit the scope of
13 the people to whom this inquiry should be made?

14 MR. WILLEMIN: Sure. Just to be clear from our
15 perspective. I understand that that appears broad. But I
16 believe that the information that's being sought is sort of
17 self-limiting.

18 So there is no reason to ask a teacher with the DOE
19 whether she knew that Ms. Catapano-Fox was going to be
20 appointed executive director. Now, that said, I understand
21 that concern.

22 What I'm really concerned about is the CCRB's board
23 members executive level as well as the mayor's office and the
24 police department. And it's really important those two
25 entities, because they are two entities that were involved,

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1 first of all, in many of the allegations, in terms of the
2 police department, in terms of impropriety with the CCRB, but
3 also they were involved in removing Ms. Catapano-Fox as
4 executive director by reshaping the board in the month before
5 she was voted out.

6 So to the extent -- my intent was to basically seek
7 information concerning the knowledge of the people in the
8 mayor's office and the NYPD and the CCRB.

9 THE COURT: Let me stop you there, sir.

10 Because NYPD, you have to know, this is a very, very
11 large organization. And it's certainly -- I don't think it
12 matters that some beat cop in Queens was aware of a New York
13 Post article about what happened. I don't think you're going
14 to that level of granularity, are you?

15 MR. WILLEMIN: No. I agree with that. I agree with
16 that.

17 Again, in terms of the NYPD it would be more -- the
18 problem is I'm a little bit hamstrung because I don't know who
19 Emery speaks to there. I assume he speaks with
20 administrative-level employees or the top X percent of the
21 administration there. So I mean that's what I'm looking for.

22 I'm looking for whether anyone from Bratton or his
23 close administration was involved in these decisions.

24 And I know that at least Bratton was involved in some
25 of the decisions in this case. So that's where my focus is, on

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1 the top level. I'm not looking for the beat cop. That's
2 correct.

3 Same thing with the mayor's office. It's hard for me
4 to pinpoint particular individuals because I don't have the --
5 the org charts there.

6 THE COURT: Nor do I.

7 Ms. Canfield, can you help us. We're trying to arrive
8 at a smaller universe of people to whom this inquiry can be
9 directed. Can you help us in that regard.

10 MS. CANFIELD: With respect to the mayor's office I
11 would suggest the Office of Appointments, because the Office of
12 Appointments, as I understand it, is responsible for assisting
13 and appointing the chairperson, Mr. Emery's position, and also
14 in appointing the new executive director, which is the same
15 across the city, all city agencies, so it's a function of that
16 office, after the mayor was elected, to vet candidates to
17 replace the current administration's appointees as
18 commissioner. I would say that would include Chloe Drew,
19 Kathleen Rubenstein and perhaps to a certain extent Maya Wiley
20 who is the mayor's counsel and perhaps some of their
21 assistants.

22 In terms of the police department. From what I can
23 tell, the great majority of the ESI that I have reviewed,
24 e-mails sent by the plaintiff, a lot of her correspondence
25 mirrored the Office of Appointment's and the deputy mayor's --

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1 I can't recall her name -- but anyway with respect to the
2 police department, the Department Advocate's Office, who is
3 responsible for bringing charges.

4 THE COURT: Mr. Willemin, in the first instance, can
5 we limit the requests to the Office of Appointments and the
6 Department Advocate's Office with the understanding that if
7 there is some incredibly illuminating e-mail that comes out in
8 the ESI discovery that names somebody else in either of those
9 two organizations we can talk about reopening discovery as to
10 them?

11 MR. WILLEMIN: Yes. So I'm fine with the Office of
12 Appointments. Although I would just say that to the extent you
13 ask Kathleen Rubenstein who was involved in the decision-making
14 process of the board members and she names some people outside
15 of that office, then obviously we need to follow those trails.

16 With regard to the DOA, I'm fine with that. But I
17 guess my -- I want to also be asking the people in the police
18 department who are responsible for appointing board members.
19 Because the police department gets its own board member. And
20 it was a board member that was swapped out. And so to the
21 extent that there are individuals responsible for that, I'd
22 like to know who they are.

23 But then I'm okay otherwise with the limitations,
24 again, assuming that we follow the trail once we ask people.

25 THE COURT: Ms. Canfield, does that work for you as

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1 well?

2 MS. CANFIELD: Sure. I'm not familiar with the
3 structure of the police department in terms of board
4 appointments but I can follow up with those.

5 THE COURT: Let's do that then.

6 Mr. Willemin, let me tell you the other concern I have
7 about your interrogatories. I don't think that they are in
8 violation of the local rules because I do think they are
9 seeking the identities of individuals. But I am having some
10 difficulty myself understanding the concept of the words "aware
11 of." So I don't know if there's a way that you can clarify or
12 perhaps put some limitations on what you're really seeking.13 MR. WILLEMIN: I think -- so where I did that was
14 Interrogatory 5, Interrogatory 6, a few of them. That's
15 correct.16 The issue is I'm trying to find out how far up the
17 chain these decisions go. So I can figure out -- I mean I've
18 already noticed a number of depositions, obviously. But my
19 main issue is to figure out how far up the chain they go. So
20 that if -- I don't want to get hyper-technical. If they say
21 who was involved in let's say appointing this particular board
22 member and they say well this person was the one who originally
23 made the recommendation, whatever it may be, but that needs a
24 rubber stamp or that needs some sort of level of approval or at
25 least needs to be run past some high-level individual, I just

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1 want to know who that line of individuals is. That's what I
2 intended by it, the term.

3 I can certainly try to -- if this explanation itself
4 isn't sufficient certainly try to make that more clear.

5 THE COURT: Ms. Canfield, do you think that you could
6 work with Mr. Willemin at trying to arrive at an understanding
7 between the two of you that you may or may not share with me as
8 to what "aware of" pertains to?

9 MS. CANFIELD: Sure. And I think I have a better idea
10 who it might be in that universe as I go through the ESI.

11 THE COURT: Perhaps instead of "aware of" you might
12 like something like "participated in the decision." It may
13 have been "involved in the decision."

14 But I think -- I take Mr. Willemin's point which is he
15 doesn't want anybody to get too cute or too clever about who
16 was involved. So I think you have that in mind.

17 Mr. Willemin, I think that's the last of my concerns
18 about the interrogatories. Is there anything else I should be
19 raising on that issue?

20 MR. WILLEMIN: No. I think that that covers
21 everything. Thank you, your Honor.

22 THE COURT: Let's please then proceed to the document
23 requests.

24 I am looking at two things right now, a June 16 letter
25 that I believe is -- has been identified for me as a deficiency

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1 letter and was attached as Exhibit C to a June 17 letter that I
2 received from Mr. Willemin.

3 Counsel, I do want to understand what is and is not
4 resolved because the parties may be of the mind that something
5 is resolved and it may not, in fact, be. So you'll excuse me
6 if we're going through these individually.

7 Mr. Willemin, Request No. 4. Is that resolved?

8 MR. WILLEMIN: Almost. In Ms. Canfield's letter to
9 the Court she agreed to produce responsive ESI to the extent
10 that it exists. But I would just say that the defendants are
11 obligated to produce all documents, whether ESI or hard copies.
12 So I don't know whether that was intentional or not.

13 And that's case with six of the requests that are
14 almost resolved for the same reason.

15 THE COURT: What you're saying, sir, is you're worried
16 that in committing to produce the ESI they may be omitting or
17 overlooking hard copies of these materials?

18 MR. WILLEMIN: Yes. Obviously not duplicates of
19 what's in the ESI but to the extent some of these documents are
20 found only in hardcopy that's all I'm referring to like
21 handwritten notes or text messages or, I don't know -- well I
22 guess text messages would be ESI -- handwritten notes or other
23 hardcopy documents.

24 THE COURT: Ms. Canfield have you also been looking
25 for hardcopies of things like notes?

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1 MS. CANFIELD: I have directed the agency to pull
2 board materials that they provide board members during these
3 meetings. I don't know yet if any of those materials have been
4 recycled. So it's back to a certain date. I'm waiting to hear
5 back from them. But certainly there's a lot of information and
6 ESI.

7 THE COURT: Let me ask the question more pointedly.

8 Can I understand, please, that while you're looking
9 for ESI that is responsive, and while that may be the bulk of
10 what you produce, you have not forgotten about the fact that
11 some things may exist only in hardcopy and you have looked for
12 that as well?

13 MS. CANFIELD: I have asked the agency to look for
14 hardcopies.

15 As I said, it's my understanding from some of the
16 witnesses that the board is presented with an agenda in a
17 packet that they use during the board meetings, and that those
18 packets are collected at the end of the board meeting. I've
19 asked the agency to retrieve those for me. I don't know what
20 exists yet though.

21 THE COURT: I understand that. Mr. Willemin I'm
22 satisfied with that.

23 Let's move please to what is in your deficiency letter
24 as B, and it's several requests, 25, 30, 36, 42, 44, 46, 48,
25 and 50.

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1 Not resolved, correct?

2 MR. WILLEMIN: Correct.

3 THE COURT: Let me -- Ms. Canfield, I have the
4 notation to myself here and I will simply -- because I don't
5 want to have extensive discussion on this -- in the description
6 in the deficiency letter of the plaintiff's position and in the
7 description in your letter of the 23rd, of your response, I'm
8 siding with plaintiff here.

9 So I don't know that I need to go into extensive
10 detail. I certainly don't need to have argument on it. But I
11 agree with what plaintiff is seeking. So I just want to make
12 you aware of that.

13 MS. CANFIELD: I did have one very important
14 objection. It's a violation of any law, rule, or regulation or
15 policy. I think that is incredibly broad. There could be like
16 a dress code violation. That would encompass that. So that's
17 why I limited it.

18 If he wants comparators, I think that comparators are
19 those that have complained of race discrimination, sexual
20 harassment and retaliation. I mean that's really the universe
21 of what's relevant here. Not if someone complained about some
22 other type of violation or -- I just think that has to be
23 narrowed. Otherwise -- I mean I know this agency, there's a
24 lot of complaints. So I just think -- I guess this would be a
25 wild goose chase for us.

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1 THE COURT: I don't see that in your letter to me of
2 the 23rd, the limitation you're now proposing.

3 MS. CANFIELD: Well, it's in the -- my objections to
4 response. I renewed the objections. I construed it as seeking
5 formal internal and external complaints of race discrimination
6 sexual harassment and/or retaliation made by current and/or
7 former employees of CCRB. That would be easily retrievable if
8 there was a formal complaint. Informal complaints, I don't
9 know how I would hunt those down.

10 THE COURT: Mr. Willemin, let me hear from you.

11 MR. WILLEMIN: I would just say quite simply that the
12 scope of the allegations of the complaint go well beyond
13 complaints of sexual harassment, gender discrimination or race
14 discrimination. I mean a big bulk of the complaint concern
15 protected activity under section 75-b which protects
16 individuals who complain about any violation of law, rule, or
17 regulation. There are -- I mean, many, many cases in the
18 context of employment disputes like this that say that other
19 complaints of similar ilk and the reaction to those complaints
20 are relevant in determining that defendants' motive vis-a-vis
21 their conduct towards the plaintiff.

22 So, in this case there are a lot of complaints that
23 Ms. Catapano-Fox made regarding violations of the way in which
24 the CCRB is supposed to conduct its business under the charter,
25 under the CCRB's rules and regulations and then, obviously,

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1 with regard to all the collusion with the police. For
2 instance, statistics that are being put in the report as being
3 false. So I mean none of this stuff falls under sexual
4 harassment, race or gender discrimination but it's all critical
5 to the complaint.

6 So, if you want to propose a limitation, of course I
7 don't -- if there's a dress code violation complaint, I don't
8 know whether that actually exists or whether that was just kind
9 of a hypothetical.

10 THE COURT: No. No. No. I think that's real.
11 That's the problem I'm having.

12 You yourself agree that the comparators have to be of
13 a similar ilk and the dress code violation is not.

14 So why don't you -- at least Ms. Canfield has proposed
15 a limit. I need a counterproposal from you. And just saying
16 anything that might be subject to 75-b that's not at all
17 sufficient.

18 MS. CANFIELD: May I, your Honor? And Mr. Willemin?
19 I did include retaliation. And I am including, in my
20 review of ESI, there are employees who have written letters to
21 the board complaining on certain investigative techniques,
22 they're complaining about how cases are truncated. We have
23 other lawsuits that this department is handling brought by
24 employees of CCRB who have complained about some of the things
25 that Mr. Willemin is referring to, for instance how CCRB

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1 investigators are treated or how investigations are
2 substantiated but then the board unsubstantiates them. I am
3 including all of that correspondence in my production.

4 THE COURT: To my mind that is enough.

5 Let's move on to the next one, please.

6 This is Category C, Requests 41, 43, 45, 47, 49, and
7 52.

8 I think is also not resolved, correct?

9 MR. WILLEMIN: Yeah. Largely the same issues as the
10 last bunch though. In the sense that the defendants responded
11 in the same manner. So to the extent that the documents
12 that -- and this is more narrow because it's communications
13 specifically involving plaintiff and various individuals
14 concerning -- and in this case what was excluded was the
15 violation or potential violation of any law, regulation, rule
16 or policy.

17 In this case, given that the communications involve
18 ones that are made by plaintiff, I don't see how -- all of that
19 would be protected under 75-b and it is what plaintiff is
20 saying. So I think in this case I'm not -- I don't know that
21 there is a need to carve out a limitation on what we requested.

22 And then just very quickly, this is an issue with the
23 other one too. I think that you've sided with plaintiff but I
24 just want to confirm. It's not just the copies of the
25 communications themselves that are the issue. It's also

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1 documents -- what the CCRB's response to those complaints were.
2 So investigations of those complaints, etc. And so that goes
3 for both batches of documents we're talking about now.

4 THE COURT: Well to your last point, that is my
5 understanding as well.

6 To your first point, Ms. Canfield are you not just
7 producing all documents that you can find that Ms. Catapano-Fox
8 is on, anything she has either sent or received?

9 MS. CANFIELD: Everything? No. No.

10 To this subject matter, yes.

11 But to any document that she sent or received? No. I
12 can but that's a lot of e-mails. A lot of nonresponsive
13 irrelevant e-mails.

14 Let me just make one point. They want communications
15 between plaintiff and the EEO office. The EEO office would not
16 handle any type of whistleblower-type complaints. They would
17 strictly handle any retaliation for engaging in protected
18 activity and then of course any discrimination claims. So
19 that's why I limited it to what I did. Just race
20 discrimination and sexual harassment.

21 But back to what I said earlier. Any time I am
22 running across e-mails that are from plaintiff or CCRB
23 employees complaining about operations of CCRB or any type of
24 harassment conduct, anything like that, I am producing it.

25 THE COURT: Again, I'm going to agree with that.

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1 Category D requests numbers 53 and 54. Mr. Willemin,
2 is it resolved?

3 MR. WILLEMIN: I believe this is in the almost
4 resolved category. That's correct. This is in the almost
5 resolved category. So I think it's now resolved. If it is the
6 case that, again, that all hardcopy documents are going to be
7 searched for and produced in addition to all ESI.

8 MS. CANFIELD: Yes. And there is ESI too, additional
9 ESI that I will be producing. I have come across some e-mails
10 related to the alleged harassment.

11 THE COURT: Category E. Requests 55 and 56. Also
12 almost resolved?

13 MR. WILLEMIN: That's correct, your Honor.

14 THE COURT: I'm grateful for that.

15 Category F. Requests 61 and 62.

16 I thought we had an agreement that it included
17 October 2014.

18 Mr. Willemin, what is left to be resolved?

19 MR. WILLEMIN: What's left to be resolved is the
20 limitation that there -- the production is going to contain
21 only communications between Emery, Taylor, Fisher, Soler --
22 specific individuals that were identified by defendants in the
23 response. And that we'd be entitled, to the extent that there
24 are individuals in the mayor's office who are not Drew, Wiley
25 or Rubenstein that were involved in the process of selecting

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1 new board members or who communicated about the allegations in
2 this lawsuit, etc. Again, I'm at a disadvantage to know who
3 those individuals are. But my assumption is that someone has
4 to approve, let's say, when a new board member is appointed.
5 So any communications of that individual -- and this is not
6 just with regard to 61. This is a couple of different areas
7 here. Communications of those individuals should be produced.
8 So that was my concern there.

9 Same thing, again, the NYPD. Now I'm not saying that
10 they were. But let's say de Blasio and Bratton were e-mailing
11 back and forth about this case with each other. That would be
12 something we would need to see and that would not be included
13 in defendants' response.

14 THE COURT: Ms. Canfield.

15 MS. CANFIELD: As far as de Blasio and Bratton I
16 highly doubt that they were e-mailing about this case. But I
17 can tell you that we have collected ESI from three individuals
18 working in the mayor's office at that time: Chloe Drew, Maya
19 Wiley and Kathleen Rubenstein. So any communications that they
20 would have sent would be captured with respect to any
21 discussions regarding the board and the lawsuit.

22 THE COURT: Are you suggest that if anyone in the
23 mayor's office were involved in discussions about this subject
24 matter that one of those three individuals would be on the
25 e-mail at some point?

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1 MS. CANFIELD: Yes. Chloe Drew is the director of the
2 Office of Appointments. She is the main person who would have
3 worked to replace plaintiff in her role as executive director.
4 That was her sole function. The Office of Appointments sole
5 function was to vet candidates to replace the current
6 commissioners and the current executive staff of the various
7 city agencies.

8 THE COURT: I'm sorry. Ms. Canfield, let me be more
9 precise. I think Mr. Willemin was expressing a concern that
10 there may be ESI out there from other individuals in the
11 mayor's office who would be having relevant communications,
12 communications about information relevant to this lawsuit or
13 relevant to these document requests, that might not be caught
14 up in a review of the folders of the three individuals who you
15 have mentioned. So that's why I was asking you whether you are
16 confident that any conversation about Ms. Catapano-Fox at the
17 mayor's office would have been copied to one of these three
18 people.

19 MS. CANFIELD: Based on my investigations, speaking
20 with the three individuals from the mayor's office, I am led to
21 believe that all the conversations were within those three
22 individuals and perhaps their assistants. I do not know of
23 anyone else in the mayor's office who would have been privy to
24 the conversations with respect to plaintiff.

25 Now, with respect to Bishop Taylor there may have been

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1 conversations with city counsel. But I will know better once I
2 see the e-mails from Chloe Drew.

3 Bishop Taylor is a city council appointee, not the
4 mayor's office.

5 THE COURT: I just want to understand what you think
6 you might find as you go through those e-mails.

7 MS. CANFIELD: I will find who they communicated with
8 and then certainly plaintiff is welcome to follow up if there
9 is someone additional that they either want to depose or they
10 want them to search their e-mail boxes for responsive
11 communications. At this time I don't know of anyone else who
12 would have responsive information.

13 THE COURT: What about at the NYPD level?

14 MS. CANFIELD: I don't know anyone at the NYPD. As
15 far as my knowledge, no one at the NYPD was involved with this.

16 THE COURT: I'm sorry. The entity that you mentioned
17 sometime ago, the Department Advocate's Office, there is no one
18 there who would have been involved with this?

19 MS. CANFIELD: The former director of the Department
20 of Advocate's Office -- and, I'm sorry, I know her first name
21 is Julie and I can't remember her last name -- she is no longer
22 employed there. And the communications that I see are
23 predominantly whether or not the Department Advocate's Office
24 is going to go forward with the prosecution.

25 The police department was not involved at all in the

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1 appointment of either Richard Emery or the replacement of
2 plaintiff.

3 THE COURT: Yes, Mr. Willemin.

4 MR. WILLEMIN: If I may.

5 The NYPD was responsible for the replacement of at
6 least one of the board members. And I'll confirm this, but
7 this is -- my recollection is that they were responsible for
8 the replacement of one of the board members as, again, the
9 board was being revamped to get rid of plaintiff.

10 That's correct. So two of them actually were
11 designated by the NYPD commissioner.

12 So, obviously there are communications in the NYPD
13 about the designation of these individuals and the removal of
14 the previous ones which are relevant -- given that -- I mean
15 the documents are pretty clear that the board was revamped, at
16 least largely in part to get rid of Ms. Catapano-Fox. And so
17 the reasons for those appointments, the process, etc., etc.,
18 are relevant and that would have occurred within the NYPD
19 almost certainly. They are their appointments.

20 Secondly, the communication between the CCRB and NYPD
21 is also, you know with regard to many of the underlying
22 allegations in the complaint, the failure of the NYPD to follow
23 up on substantiated complaints. Again, the alleged collusion
24 between the CCRB and the NYPD and the way they handled these
25 investigations.

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1 So, again, that may be the DOA. Maybe we'll have that
2 covered. But that's just something to throw out there. And
3 most importantly these board member were -- again, they were
4 designated by the NYPD.

5 MS. CANFIELD: Let me just -- I know your theory of
6 the case is that they were replaced just to guilty rid of your
7 client but they were actually replaced because their terms had
8 expired and there was a new administration in the mayor's
9 office and there was also a new police commissioner and it was
10 their right to put in the people that they want to work for
11 them, so.

12 THE COURT: But Ms. Canfield --

13 MS. CANFIELD: So these to answer the question, I do
14 not know who would have been involved with the police
15 department appointment.

16 I can tell you that any communications with respect to
17 the allegations towards Richard Emery that he colluded with the
18 police or failed to prosecute, all of that would be contained
19 in the ESI.

20 THE COURT: Although, Ms. Canfield, to be clear. I'm
21 not necessarily seconding the recitation of events as described
22 by Mr. Willemin. But to the extent that there were
23 replacements of board members for whatever reason, either
24 because there was some decision to pack the board to get rid of
25 Ms. Catapano-Fox or because their terms had come to an end, I

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1 do believe the plaintiff is entitled to ESI or to documents
2 relating to those decisions. So to the extent you have to go
3 inquire within the NYPD as to who was involved in that I am
4 asking you to so do.

5 MS. CANFIELD: I will do so.

6 THE COURT: Thank you.

7 The next one is request 66. Mr. Willemin, resolved,
8 not resolved?

9 MR. WILLEMIN: This is not resolved. And this is I
10 think pretty straightforward. The allegation is that defendant
11 Emery came in, told Ms. Catapano-Fox right off the bat that the
12 mayor's office wanted to get rid of her as soon as possible and
13 requests all documents concerning that which would of course
14 include documents within the mayor's office or between the
15 mayor's office and Mr. Emery about getting rid of Ms. Fox,
16 perhaps the reasons therefor. And so that's what we requested.
17 And the limitations imposed by defendants was just the
18 communications between plaintiff and defendant Emery which
19 doesn't -- I know those. Defendant Emery walked into the room
20 and told plaintiff X, Y, Z. That's not what we're looking for
21 here. We're looking for documents to substantiate the
22 allegations.

23 THE COURT: But is there any limitation from where
24 these documents are being sought?

25 MR. WILLEMIN: I guess I would just say again that the

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1 limitation is in the subject matter. I mean I can't imagine --
2 and I wouldn't ask defendants to ask a low-level employee of
3 the mayor's office about wanting to get rid of
4 Ms. Catapano-Fox. But defendant Emery presumably knows who he
5 spoke with at the mayor's office about getting rid of
6 Ms. Catapano-Fox.

7 So I guess all I'm asking is for Ms. Canfield to say
8 who did you speak with about this and then get the
9 communications if they exist.

10 THE COURT: But Mr. Willemin let me be clear. It is,
11 if you will, not helpful to say I have a very broad request but
12 the subject matter defines it or limits it. That's not helpful
13 to me. You're still asking Ms. Canfield to basically go all
14 over the place to get an answer to this.

15 I'm not convinced, or at least I don't share your
16 confidence that the topic matter of the request gives you a
17 very clear understanding of its limitations. So let's figure
18 out who she's going to talk to about this.

19 Obviously defendant Emery. Who else?

20 MR. WILLEMIN: Sure. So if defendant Emery said they
21 spoke about this with X, Y, Z at the mayor's office, then we'll
22 speak with X, Y, Z and that should illuminate -- if X, Y, Z
23 says it was just me or if X, Y, Z says it was A, B, C who was
24 involved also, either way, that will illuminate the people who
25 are involved in these discussions to the extent that there were

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1 any and then we'll just ask if they have documents.

2 MS. CANFIELD: Can I interject, your Honor, please,
3 one second.

4 THE COURT: Yes.

5 MS. CANFIELD: Again, going back to the Office of
6 Appointments, the three that have been identified -- actually
7 two primary, Chloe Drew and Kathleen Rubenstein were
8 responsible for replacing plaintiff as executive director. And
9 communications by and between them and also Mr. Emery will shed
10 light on who else may have been involved.

11 That's one of the problems with responding to some of
12 these document requests.

13 And again, you asked me was it necessary to address
14 this issue, and I know you're loathe to grant extensions, but
15 there's just a volume of material that we're going through and
16 it just takes time. And I'm sure that once the material is
17 fully reviewed and produced that a lot, if not all, of these
18 documents requests will be satisfied.

19 THE COURT: Mr. Willemin, what I'm going to do is I'm
20 assuming that Ms. Canfield is looking -- is speaking with
21 defendant Emery and speaking as well with the relevant people
22 at the mayor's office and if it turns out that there is
23 additional information out there then we will know that in the
24 course of the depositions but I'm not going to have her ask
25 every single person in New York city government whether they

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1 have materials responsive to this. I'm going to move on.

2 I am told, but perhaps I'm being overly optimistic,
3 that the document requests listed in categories H, I, J, and K
4 are resolved with the possibility of a lingering privilege
5 issue.

6 Mr. Willemin, may I hear from you on that?

7 MR. WILLEMIN: H being Request 103. That is correct.
8 So they have agreed now to produce communications from Emery or
9 Taylor to the media. I would only ask that to the extent
10 Emery or Taylor instructed the press secretary at the CCRB say
11 X, Y, Z to the media, that that would be included. So that's
12 the only additional piece that I would say in response to their
13 response.

14 THE COURT: You're saying if there's ESI that includes
15 a request by defendant Emery that a person in the press office
16 do something you would want that as well?

17 MR. WILLEMIN: To the extent it's related to this
18 case, yes.

19 THE COURT: Although I assume that that's going to get
20 produced to you because it's got defendant Emery's involvement
21 in it.

22 MR. WILLEMIN: I would hope so. It's just that the
23 way the response was provided it said that they wouldn't
24 produce it so that's why I'm just making sure.

25 THE COURT: Ms. Canfield, any problems with that?

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1 MS. CANFIELD: The extent of my objection, there is no
2 timeframe here. And I know that we collected -- plaintiff
3 served a second set of interrogatory document requests on us
4 subsequent to an article that was published the weekend before
5 Memorial Day involving his client. And I know that we ran a
6 collection of the communications director at that time. But I
7 don't believe we ran a collection prior to that period. So if
8 it gets limited to -- we have the collections from the two
9 named defendants, the CCRB board members' e-mails although, as
10 I said in my letter, we don't have their business or their
11 personal e-mails collected yet.

12 So I guess if I could have a limiting scope, if there
13 are certain communications, there are certain reports in those
14 newspapers that are responsive, then I would have an easier
15 time searching.

16 THE COURT: Mr. Willemin, can't we give a date
17 restriction of a particular year?

18 MR. WILLEMIN: Yes.

19 THE COURT: What is the year?

20 MR. WILLEMIN: Well I would just ask for August of
21 2014 to the end of May 2015. So just a little less than a
22 year. Because that's the point in time -- I can restrict it
23 more than that. There are about three or four articles that
24 came out that are particularly important. So I can work with
25 defense counsel to provide let's say two-week windows or

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1 three-week windows around the articles that I'm concerned
2 about. And then, again, assuming that we're searching Emery
3 and Taylor as well as the press secretary or whoever, you know,
4 they would have instructed to do X, Y, Z then that's fine. I
5 can limit it in that way.

6 THE COURT: Ms. Canfield, does that work?

7 MS. CANFIELD: That's fine. I can also let you know,
8 Mr. Willemin, after interviewing the communications director,
9 it sounds like most of her communications were by telephone.
10 But I will produce what I have.

11 MR. WILLEMIN: That's fine. We'll maybe we'll depose
12 her.

13 Okay.

14 THE COURT: Request 106, Mr. Willemin?

15 MR. WILLEMIN: Request 106 is resolved based on
16 defendants' response to the letter. That's correct.

17 THE COURT: Requests 110 and 111?

18 MR. WILLEMIN: The issue with this is that we would be
19 seeking -- and maybe this is what we're getting -- so we're
20 seeking documents concerning the decision to retain counsel.
21 And we sent -- our firm sent a letter on September 26, 2014. A
22 week and change later plaintiff was formally terminated. So we
23 want, obviously, documents concerning the decision to retain
24 counsel and send that letter. And the defendants have agreed
25 to produce documents between Emery, the mayor's office and

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1 corp. counsel. But I would just say that Emery's -- first of
2 all -- one of the major issues -- one of the allegations in the
3 complaint is that one of the board members specifically
4 identified that the allegations in the letter that we sent were
5 all true. So that's something that we'd want if it exists.
6 And that wouldn't be, you know, Emery or mayor's office or
7 corp. counsel. That may be a separate issue because we're
8 going to talk about board member ESI. But that's of particular
9 importance.

10 Secondly, Emery's communications to anyone are
11 relevant. I mean if Emery communicated -- again, this may be
12 caught in his ESI -- but if Emery communicated to the NYPD, for
13 instance, or if Emery communicated to anyone, really, and said,
14 hey, this is true or this is not true or, you know, this makes
15 me mad, I'm going to fire her or whatever, you know, those
16 communications need to be produced.

17 THE COURT: All right. Although, again, you haven't
18 suggested to me that there are things that aren't going to be
19 captured by a search of Emery's ESI.

20 MR. WILLEMIN: That is -- well to the extent that
21 there are -- that we're searching all of Emery's personal,
22 business, etc., ESI and, you know, if there's text messages or
23 whatever, then that's correct.

24 That's correct.

25 THE COURT: All right. And I will talk in a few

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1 moments about the ability to obtain personal or
2 non-city-related business e-mail accounts. We'll talk about
3 that in a moment. I don't want to speak for the city on that
4 because I want to understand it more.

5 Request No. 115. Is that resolved?

6 MR. WILLEMIN: I think so. Is it my understanding --
7 it was unclear to me, but my understanding is that they've
8 agreed now to produce all responsive documents. Obviously not
9 privileged, you know, responsive documents. If that's true,
10 it's resolved. Not just the transcripts but all responsive
11 documents.

12 THE COURT: Ms. Canfield.

13 MS. CANFIELD: Sure. As I said earlier, to the extent
14 they exist we will produce them. It's my understanding that
15 there was a packet that was sent out for each board meeting.
16 If they have those and didn't shred them, I will produce them.

17 MR. WILLEMIN: Again, handwritten notes. That's
18 important also. Just to say.

19 MS. CANFIELD: I will ask, but that will be really
20 difficult because that's not going to be housed with the CCRB.
21 That will be with individual board members most likely.

22 THE COURT: Let me move on then to the next topic of
23 discussion which is the ESI search terms and custodians and
24 things of that nature.

25 I guess I need to understand, Ms. Canfield, why the

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1 hesitancy or the reluctance to review Mr. Soler's ESI?

2 MS. CANFIELD: The only reluctance is the volume, your
3 Honor. If we can narrow the search terms so the volume is not
4 so high I have no problem reviewing his ESI. With the
5 deadlines that we're under now, this will just be impossible.

6 THE COURT: I'll talk about the deadline momentarily
7 and, again, you know how much I appreciate you trying to push
8 that.

9 MS. CANFIELD: I truly apologize, your Honor. If
10 there was some way that we could get through this material by
11 the end of the month -- I have other cases that I'm neglecting
12 because of this case -- I would be happy to do so. But it's
13 just -- we have over ten thousand with the plaintiff and the
14 two named defendants and the two nonparty witnesses.

15 Last evening we were able to load the city hall
16 custodians into -- we conducted a DT search, which is basically
17 looking -- indexing and looking at the plaintiff's search terms
18 and we got twelve thousand documents.

19 So we're looking at over 20,000 documents to review in
20 such a short period of time. And many of the documents need to
21 be coded for privilege or for law enforcement purposes. So
22 it's -- as I said I -- no disrespect to your Honor, but it
23 is -- it's almost an impossible task.

24 As I explained to plaintiff's counsel prior to this
25 phone conference even if we were to enlist first years or say

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1 contract attorneys, the industry standard is only one hundred
2 documents a day with redactions and two hundred without
3 redactions and it's just -- I just don't -- it's impossible.
4 And I can speak more pointedly to specific questions regarding
5 ESI. Happy to do so.

6 I also have a representative from our litigation
7 support unit. She's offsite but she can dial in if you want,
8 if you have some questions for her to explain some of the
9 difficulties in getting not only reviewed but processed and
10 produced.

11 THE COURT: Well let's go to the issue that I actually
12 wanted to talk about.

13 Mr. Willemin, if I were to extend discovery for some
14 reasonable period of time, which may be less than defense
15 counsel is seeking, can I understand that you will work with
16 her to come up with a set of search terms as to Mr. Soler so
17 that his ESI can be reviewed?

18 MR. WILLEMIN: Here is my issue. I don't -- I'm not
19 opposed to compromising at all. The issue that I'm having is
20 twofold. One is that we have compromised. We actually ended
21 up using what defense counsel had proposed as search terms and
22 then, even after that, we crossed a number of search terms out
23 to narrow it even more. And we're left now with a set of
24 search terms that to me I don't see any false -- you know, any
25 likelihood of a tremendous number of false positives. And I

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1 haven't had a proposal by defense counsel other than what we've
2 already accepted to narrow these terms.

3 The second problem that I'm faced with at this point
4 is that I don't believe that 2,000 documents in a case like
5 this or even -- I understand the total number may be more than
6 20,000 -- to review, that's simply not exorbitant. This is a
7 case involving a lot of issues and we have -- we have cases
8 here that involve tens and tens of thousands of documents that
9 are produced.

10 So I understand and I'm sympathetic to defense
11 counsel's position. But I don't believe that -- I don't
12 believe that we've in any way sort of slacked on our duty to
13 compromise. And I'm not sure where to go from here other than
14 to just -- I would do my best if defense counsel makes
15 proposals but I don't think we're in an unreasonable position
16 right now.

17 THE COURT: That actually was kind of not responsive
18 to my question. And I really -- you can get off the soapbox
19 now. Thank you.

20 What I really want is for you to work with
21 Ms. Canfield and if it ends up being that you are using the
22 same collection of search terms that you've used for the others
23 for Mr. Soler, that's fine. If you can agree to more, that's
24 fine. If you need to come to me to get some resolution on the
25 divergence of proposals that are made, you'll do it promptly.

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1 Really what I want to know is can you actually work with her
2 professionally in trying to come up with a list for Mr. Soler?

3 MR. WILLEMIN: I can continue to do that.

4 THE COURT: Then you shall do that.

5 Ms. Canfield, I need to understand what you perceive
6 your responsibilities to be with respect to the personal and
7 non-city business e-mail accounts of the board members.

8 MS. CANFIELD: Let me begin by backing up. We
9 collected the e-mail boxes, the business e-mail boxes of the
10 two named defendants. And we collected those -- I just learned
11 this week -- using the names Tracy, Tracy Catapano, Fox,
12 variation stem searches of those names. Now that we've
13 negotiated search terms we have to go back and run those search
14 terms on these business e-mail boxes and then do a second
15 collection.

16 A lot of time and effort to reach out to the IT
17 people, these respective -- I mean Mr. Emery -- and even the
18 problem with running a search term, say, for instance, like
19 "retaliation" in his e-mail box, he's a partner of a civil
20 rights law firm, quite frankly, who often sues the city. And
21 I'm getting pushback from his firm in applying some of these
22 search terms. And I would imagine that someone might say that
23 Alphonzo Grant, who is an employee of Morgan Stanley, Morgan
24 Stanley is going to give us a great amount of pushback in
25 collecting materials from his e-mail box or applying search

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1 terms to those e-mail boxes.

2 Logistically it's a problem for us. What I suggested
3 to plaintiff's counsel is we'll go ahead and do the
4 recollection from Emery and Taylor, and we'll review the
5 material that we have from them, as well plaintiff, and these
6 two nonparty witnesses, as well as the city hall people. And
7 then if there's something out there after we produce -- I'm
8 happy to do a rolling production -- after we produce, if
9 there's some e-mail out there that they think exists, if they
10 can be more pointed in the search, we will go and try to
11 retrieve that information from the board members.

12 I have instructed the current board members, any
13 correspondence, they must use their CCRB e-mail account. But
14 prior to this -- my instruction, it appears that they were not
15 utilizing their CCRB e-mail. So we have a big problem with
16 retrieving those board members' e-mails.

17 THE COURT: That's exactly my point. I think the
18 rolling production is a good idea, rather than deluging
19 plaintiff's counsel all at once. That said, your having told
20 me that folks typically frequently used personal e-mail
21 accounts or their business -- their non-CCRB business e-mail
22 accounts, I don't know how you can say that they don't get
23 searched because that may be where everything is.

24 MS. CANFIELD: Let me tell you that by searching -- to
25 the extent there are conversations between plaintiff and board

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1 members and the board members used their business accounts,
2 those communications will be captured in plaintiff's e-mail
3 collection. To the extent that defendants Emery and Taylor, or
4 nonparty witnesses Soler, George and Fenimore Fisher
5 communicated with board members, those would be captured in
6 their e-mail accounts. The only thing we're not getting is if
7 there were communications between board members.

8 THE COURT: And that's of concern to me. So let me
9 hear from -- I need to hear from you a little bit more about
10 this. I don't know why I can't have that.

11 MS. CANFIELD: Then we would definitely need a lot
12 more time, a lot more time.

13 THE COURT: Why? Can't they be limited temporally?
14 The events of the lawsuit didn't take place over an especially
15 long period of time.

16 MS. CANFIELD: I'm not even talking about the review,
17 your Honor. I'm talking about the simple collection. Everyone
18 is aware that ESI was to be preserved. Litigation holds were
19 put out as soon as we received a letter from plaintiff's
20 counsel. But the problem is, is our IT people going out and
21 conducting searches of business e-mail boxes. And I know we're
22 going to get a lot of pushback from various law firms and
23 businesses, as I said, and I don't know how long that is going
24 to take. We're talking about fifteen plus individuals.

25 THE COURT: Mr. Willemin, may I hear from you?

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1 MR. WILLEMIN: I think -- this was actually -- I had
2 always assumed that Taylor and Emery, that their personal
3 business accounts were being searched and that the only issue
4 was the other board members. But I will speak to everyone
5 because I understand this to be the issue now.

6 They used their business and personal e-mails
7 routinely. We know that from the documents we already have.
8 That's not an issue here.

9 I understand if a law firm has an issue -- I'm not
10 sure if they have standing to assert that issue in the context
11 of the discovery obligation. I mean this is -- these are
12 e-mails that need to be produced.

13 I would say though that potentially we don't use an
14 ESI protocol for these documents. The ESI protocol is used,
15 generally speaking, to make things easier for defendants and to
16 make sure nothing is missed. But in this case perhaps just an
17 instruction to all of the board members to go through all of
18 their business and personal e-mails for documents relating to
19 Ms. Catapano-Fox, this case, whatever the list may be, and just
20 turn them over to corporation counsel. That should eliminate
21 the issue of pushback from the companies and obviously
22 that's -- provides us with a little less certainty, I guess,
23 that everything is going to be produced but, again, I'm
24 certainly trying to work in that regard if that's something
25 that can help.

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1 THE COURT: Ms. Canfield, what I was going to suggest
2 before Mr. Willemin spoke was that the search be limited to --
3 for each board member's business e-mail address, a search for
4 any instances or any e-mails in which the recipient or the
5 senders were other board members for a particular time period.
6 That's all I was thinking about. As opposed to, for example,
7 the very long list of ESI terms.

8 Now Mr. Willemin has done me one better and limited it
9 to Ms. Catapano-Fox or this litigation, which I think is an
10 even smaller subset. I believe that can be done. Can you tell
11 me why that can't be done?

12 MS. CANFIELD: For the reasons I already articulated,
13 your Honor. We have not approached each business to ask them
14 to search respective e-mail boxes. I don't know what their
15 retention cycle is. They should have preserved everything. We
16 sent the litigation holds out.

17 I just don't have an answer for you. We've not
18 started the process.

19 I do want to add -- make one point; that is, that we
20 would argue -- our answer is due today, and we are going to be
21 including in that an affirmative defense of after-acquired
22 evidence based on the article that was in the paper that
23 Ms. Catapano-Fox released information in violation of Civil
24 Service Law 58. And we would argue that discovery requests are
25 not proportional to the damages in this case.

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1 Even if we did not assert that affirmative defense,
2 Ms. Catapano-Fox is currently employed. And she's making a
3 little less than what she was making at the CCRB. Just put out
4 there that the time and effort we're spending on this
5 litigation far outweighs the value of her potential damages.

6 THE COURT: I think I do disagree with you on that
7 point. You're allowed to have that view. I disagree with you
8 that we've gotten to the point of it outweighing any possible
9 damages she could have because there are some pretty serious
10 allegations there and a jury may see fit to award very severe
11 compensatory damages.

12 I think you have to reach out to the board members. I
13 do not feel comfortable -- I'm limiting it, as Mr. Willemin
14 suggested, to simply communications about Ms. Catapano-Fox or
15 her litigation, the one that's now before me. And I really
16 think that very much limits -- we can even limit the timeframe
17 to -- actually, I'll use the same limit. What was it, August
18 of 2014 to May of 2015.

19 But I do want that information. And so I think you'll
20 need to reach out to these individuals.

21 Since there has been a litigation hold, it's my belief
22 that things will not have been deleted. It's my hope that
23 things will not have been deleted. And to the extent that
24 there is pushback from the individual employers I'm very happy
25 to issue an order requiring it if that makes the process any

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1 easier.

2 MS. CANFIELD: That would probably make the process
3 much easier. I would want to clarify the timeframe.

4 August 2014 to May 2015. I don't think that's the responsive
5 time period. Mr. Willemin, can you --

6 MR. WILLEMIN: I agree. That was in particular
7 because of the article in the Post that -- I would say that
8 we're looking at March 2014, which is when Ms. Catapano-Fox
9 first began making her complaints, through the end of
10 January 2015, which is a ten-month period, which is when the
11 new executive director was appointed to the CCRB. And so
12 that's the timeframe that we would like to look at. It's the
13 same number of months but just a different window.

14 THE COURT: I agree with that. I misspoke on the
15 dates I was giving.

16 MS. CANFIELD: Then in terms of, we do need search
17 terms. If we use --

18 THE COURT: Why? The search terms would be Tracy,
19 Tracy Catapano-Fox, things of that -- variations of her name.
20 And I suppose if there's -- the recipients and the senders
21 would both have to be board members.

22 MS. CANFIELD: We can't do a search -- we can do a
23 search on terms but I can't do it on recipients. Once I get
24 the data back I can do another search.

25 THE COURT: The problem is lawsuit or litigation, I

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1 don't know how many e-mails -- how many hits that's going to
2 generate.

3 MS. CANFIELD: I agree.

4 MR. WILLEMIN: We can work to try to narrow the terms.
5 I would agree. I think that there may be some -- I think there
6 are probably some additional terms, other than just her name,
7 that could be narrow enough to try to get -- target the issues
8 in the litigation. But I would agree that it doesn't make
9 sense to search an attorney's inbox for lawsuit or litigation.
10 Although I will say if we put her name in there -- we can
11 confer on that further.

12 I would agree that we need a much more narrow set of
13 search terms. But it would certainly include her name and then
14 potentially some additional ones.

15 THE COURT: All right. Ms. Canfield, again, let me be
16 as candid as I'm capable of being. I am fully aware that you
17 have other cases and obviously I do as well. But at the moment
18 at least I do need this one to be your priority. I am asking
19 you to be reasonable in telling me how much time you will need
20 to get this done.

21 MS. CANFIELD: I have to consult with our litigation
22 support division, your Honor. They handle all the outreach and
23 do the collection.

24 I can speak to how much time it will take me to go
25 through the material. I can average between 300 and 400

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1 documents a day. And so -- we'd have to do the math and see
2 how long that would take me. I would not be able to look at
3 the material every single day.

4 I don't have an answer, I'm sorry, at this point how
5 much it would take. My estimation of 90 days, I'm told by
6 litigation support, is not enough time to collect from all of
7 the individual board members.

8 What I suggest is perhaps I submit a follow-up letter
9 to the court after I'm able to consult with litigation support,
10 after they have been able to conduct an initial outreach to all
11 the board members and their IT folks to see how long it will
12 take for them to do the collection.

13 THE COURT: May I have that letter by the end of next
14 week.

15 MS. CANFIELD: Yes. My only hesitancy is because of
16 the July 4 holiday. I don't know if people are taking
17 vacations. I will try to have that by the end of next week.

18 THE COURT: I sort of built into that the vacations
19 but, of course, someone could be out the entirety of next week.

20 MS. CANFIELD: As a compromise, your Honor, I'm sorry
21 to interrupt. I am reviewing the e-mail boxes. I've started
22 with plaintiff and the two named defendants. And as soon as
23 those are reviewed and QT'd I will produce those to plaintiff.
24 And as I go through the mail boxes, I will produce the
25 material. It's just, as I said, there's over 2,000 that

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1 plaintiff -- e-mails that plaintiff sent. And I have been
2 reviewing them since last week. And I've gotten through about
3 1500. It takes time. Our review platform had some problems.
4 I had to switch servers. As a backup I have asked litigation
5 support to see if they can take the material and field it out
6 to a vendor. They're putting together a budget now as to how
7 much that would cost. We are making every effort that we have
8 available to us to have a review platform that's fully
9 functional and that it has enough server space so others can
10 join in this project if need be, if I need to enlist contract
11 attorneys or preferably less senior attorneys to do the review.

12 THE COURT: Well I'm going to withhold judgment on
13 that part of the matter.

14 I do think that what was productive about today's call
15 at least I think we -- the three of us have a better sense of
16 how to define and delimit the plaintiff's requests. And what I
17 need now is just a realistic and fair approximation of how much
18 time you believe it will take.

19 MS. CANFIELD: Correct.

20 THE COURT: Okay. With that, I'm going let you both
21 go because I've had you on the phone enough.

22 Please collectively obtain a transcript of this
23 because I'm sure we'll need it at some point.

24 And if we can refrain from having more of these that
25 would be better but I understand it may not be avoidable.

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1 MS. CANFIELD: Your Honor, there is one more issue.

2 THE COURT: Yes.

3 MS. CANFIELD: We have scheduled a number of
4 depositions this month. And I know that plaintiff would
5 appreciate having the documents prior to deposing some of our
6 witnesses. So can we put -- tentative, maybe a 30-day
7 extension on discovery right now, just so plaintiff is not
8 placed in the position of having to take the deposition of
9 say -- I think Bishop Taylor's deposition is scheduled for next
10 week. So we're able to make a production.

11 THE COURT: I'm not sure that Mr. Willemin needs you
12 to be carrying his water. But Mr. Willemin, would you prefer
13 to take the depositions after having the ESI?

14 MR. WILLEMIN: I would. And obviously it hasn't been
15 granted yet but assuming that there's going to be some
16 extension I'm happy to move the depositions accordingly.
17 That's correct.

18 I think it's part of the scheduling order, although I
19 understand that obviously the original scheduling order hasn't
20 been followed completely. But I think the intent is to get the
21 documents before the depositions.

22 THE COURT: That is the intent. I think despite my
23 extreme reluctance to do so, I will have to grant an extension.
24 I just really want the parties to be reasonable in what they're
25 seeking. So you can suspend the depositions that are currently

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1 scheduled. I think they are all going to have to be adjourned.
2 And I will hear from Ms. Canfield next week as to her best
3 understanding of the amount of time this will take.

4 MS. CANFIELD: Okay. Thank you, your Honor. Thank
5 you so much.

6 THE COURT: Thank you both.

7 MR. WILLEMIN: Thank you, your Honor.

8 (Adjourned)

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